IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1199 OF 2003
IN
SUIT NO.1776 OF 1989

Jasmine Estate Developers
P.Ltd. and others .. Plaintiffs

Vs.

The Sangli Bank Ltd. and Ors. ..Defendants

Mr.M.P.Vamorkar for the plaintiffs

Mr.Santosh Shetty i/b M.P.Vashi for defendant no.2 and 3

Mr.Y.V.Divekar for defendant no.1 in support of motion

**CORAM : S.U.KAMDAR, J**
**DATED : 16TH SEPTEMBER, 2005**

P.C.:

1. The present motion is taken out for the purpose of setting aside appointment of Court Receiver and that perjury notice be issued to the plaintiffs, Mr.Rakesh Maniar as well as defendant no.2 and 3 for making false statements before this Court. The whole basis on which present motion has been initiated by defendant no.1 for discharge of Court Receiver is by obtaining order dt.3.7.91. A false representation was made by the plaintiffs that defendant no.2 and 3 were not the directors as

on the date of passing a consent decree by and between the bank and the said company which was represented at that relevant time by defendant no.2 and 3. It is the case of the plaintiffs that the defendant no.2 and 3 having ceased to be directors had no authority to execute and enter upon the consent terms. The learned counsel for defendant no.1 states that the record produced from the registrar of companies indicates that defendant no.2 and 3 were reappointed as directors prior to passing of decree. However, learned counsel for plaintiffs disputes the aforesaid fact. He further states that defendant no.2 and 3 has always been purportedly acting as if they were the directors of the company but in fact they were not the directors at the relevant time.

2. In the aforesaid circumstances, I am of the view, that it is not possible at this interim stage to discharge court receiver and effectively permit defendant no.1 to execute decree. I am of the opinion such a recourse would amount to dismissal of the suit It is not possible to do at this stage. However, looking at the controversies in the

matter, I expedite the hearing of the suit. I direct Commissioner to be appointed for recording evidence. Mr.Sushil Vyas, Advocate having his address as 20/24, Champa Galli, Cross Lane, 4, Singapore Building, Ground Floor, Kalbadevi, Mumbai 400 002 is appointed as Commissioner. Commissioner is directed to commence the recording of evidence from 1.11.05 and conclude the same by 31.1.06. Commissioner is further empowered that in an event if any of the witness does not cooperate and make the witness available for recording evidence inspite of two adjournments, Commissioner will treat the evidence of such witness as closed and shall go over to the next witness. The said objections will be considered by the court at the hearing of the suit. The documents will be taken on record subject to objection if any, which will be determined at the hearing of the suit after filing affidavit of evidence. All the parties shall share equal cost, charges and expenses of the Commissioner. After recording the evidence is over Commissioner to file report on or before 5.2.05 Matter to be placed on board for hearing on 13.2.05 before the Judge taking final hearing suits. With

aforesaid direction, motion disposed of. In so far as prayer of perjury notice is concerned, same is kept open after the hearing of the suit.